

# Exhibit 12



G R E E N ■ W E L L I N G L L P

November 17, 2005

**VIA FACSIMILE**

**(202) 383-8118**

Jeffrey P. Cunard  
**DEBEVOISE & PLIMPTON LLP**  
555 13th Street, N.W.  
Suite 1100 East  
Washington, D.C. 20004

**Re: Sony-BMG**

Dear Jeff:

We are pleased that Sony-BMG has taken steps to address the concerns raised in EFF's open letter, our joint letter of November 15, 2005, and our subsequent discussions. We look forward to a resolution that, to the extent possible, adequately addresses the computer security, privacy and other concerns created by Sony BMG's distribution of copy-protected CDs.

We have not yet made a final decision regarding whether the filing of another suit against Sony BMG will be necessary to secure the relief to which we believe consumers are entitled. While we are heartened by the steps your client has taken thus far, we believe that additional steps are necessary in order to vindicate the interests that led us to engage in discussions with you. We believe that if Sony commits to the relief we request, that further litigation would not be best interest of our clients or the potential class. To that end, we would be prepared to coordinate a settlement process with a view toward an amicable resolution of all pending litigation on these issues.

Accordingly, we detail in this letter the additional steps, beyond those that you have represented Sony is already taking, that, if undertaken by your client, would lead us to forgo filing a suit.

- Sony shall use the "banner" functionality included in the XCP-protected CDs, Sony shall provide notice to XCP users that they may be exposed to security risks and direct them to instructions detailing steps they can take to eliminate such risks.
- Sony shall commit to a reasonable claim and compensation plan for consumers who incurred costs and expenses related to the XCP software or their attempt to remove it.
- Sony shall immediately revise its website and other promotional materials to remove any misleading, deceptive or inaccurate statements regarding the XCP or SunnComm technologies.

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- With respect to any personally identifying information gathered from consumers who previously submitted such information in order to obtain the “patch” or “uninstaller,” and notwithstanding any more permissive provisions contained in the general privacy policy posted on its website, Sony shall commit and take steps to ensure that such information is not used by Sony or its affiliates for any purpose other than to communicate with consumers about remedying the security problems created by XCP. Going forward, the provision of personally identifying information to Sony shall not be a prerequisite for any CD exchange program or access to any uninstaller.
- With respect to consumers who requested the XCP “uninstaller” on or before Nov. 16, 2005, Sony shall provide such consumers by email, and postal mail if such information is known, with notice that the uninstallers may have created additional security risks and instructions for correcting these risks.
- Sony shall revise the End User License Agreement that accompanies any future XCP- or SunnComm-protected CDs to remove any inaccurate, misleading or deceptive statements and to disclose any communication between the software and Sony. Sony shall also publicly commit not to enforce the provisions contained in Articles 2.3 (conditioning rights on physical possession), 3.1 (restricting use and transfer beyond bounds of copyright law), 3.3 (authorizing self-help), 6 (limiting liability to \$5), 7 (indemnity against consumer), 8 (obligation to install all updates), 9.1 (conditioning rights on physical possession), 9.2 (termination for breach, failure to update, or insolvency), 10.1 (choice of law and forum), and 10.2 (waiver of jury) of such End User License Agreements.
- Sony shall provide consumers who have installed XCP with vouchers or coupons that will ensure free access , for a limited time, to anti-virus and anti-spyware tools necessary to ensure that no malicious activity has taken place on their computer.
- Sony shall publicly commit to take prompt corrective steps, equivalent to those it has taken with respect to XCP-protected CDs, in the event that security vulnerabilities are discovered in connection with SunnComm-protected CDs.
- For costs, attorney time, and other expenditures relating to this matter, Sony shall pay counsel’s reasonable attorneys’ fees and costs.

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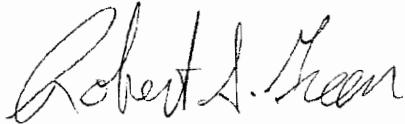
In the event Sony is willing to commit to the steps outlined above by tomorrow morning at 9 am PST, we will forgo litigation in connection with this matter.

Please let us know at your earliest convenience whether your client is prepared to commit to the remedial measures detailed above.

Yours very truly,

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Robert S. Green

RSG/lrc